IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : December 14, 2006

Roopa ....Appellant

versus

State of Punjab ....Respondent

Coram: Hon'ble Mr. Justice Virender Singh

Present : Mr. P.S.Brar, Advocate for the appellant
Mr. M.S.Sidhu, Senior Deputy Advocate General, Haryana.

Judgment

Appellant Roopa son of Seeta who is confined in Central Jail, Faridkot, stands convicted under section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'the Act') vide impugned judgment of learned Judge, Special Court, Moga dated 1.6.2005 for allegedly keeping in his possession 50 kgs 500 grams of poppy husk in two bags. He has been sentenced to undergo RI for ten years and to pay a fine of Rs 1 lac, in default of payment of fine to further undergo RI for one year.

In short, the case of the prosecution is that on 30.10.2002, ASI Gurcharan Singh PW5 who is the Investigating Officer of this case along

with other police officials was going in a private jeep in connection with patrol duty towards village Baude, Kussa, Rama and other villages falling in that direction. When they reached near the cremation ground of village Kussa, the appellant was seen sitting on gunny bags under bohar tree and after seeing the police party, he got panicky. This arose suspicion in the mind of ASI Gurcharan Singh who apprehended the appellant with the help of other police officials. It is then alleged that one Surjit Singh son of Ishar Singh resident of Meenia also reached there who was joined in the police party. The appellant was apprised of his right as per the provisions of section 50 of the Act and in this regard consent memo was also prepared which was attested by the witnesses. The accused opted to be searched in the presence of a Gazetted Officer. Pursuant thereto Nachhattar Singh DSP, Sub Division Moga was called at the spot and in his presence the gunny bags were searched. A sample of 250 grams of poppy husk was extracted from each of the gunny bag and thereafter both the bags were weighed which were containing 25 kgs of poppy husk each. The other requisite formalities were completed at the sport. After submission of the report of the Chemical examiner, challan was filed against the appellant. He was charged under section 15 of the Act and is now stands convicted for the same. Hence, this appeal.

I have heard Mr. P.S.Brar, learned counsel for the appellant and Mr. M.S.Sidhu, learned Senior Deputy Advocate General, Punjab. With

their assistance, I have also gone through the entire record.

The only point taken up by Mr. Brar is that in the present case, two bags allegedly recovered from the appellant were carrying 25 kgs and 250 grams of poppy husk each. The admitted position in the case in hand is that poppy husk was weighed along with bags as it has not come in the evidence of any of the prosecution witnesses that it was removed from the gunny bag and then weighed. Mr. Brar submits that may be it has not come on record the exact weight of the gunny bag, but it cannot be disputed that each gunny bag is of the weight of roughly 2.5 kgs but certainly it is more than 2 kgs of weight. This fact is not disputed by the learned State counsel. He then submits that the weight of the contraband in the case in hand was 50 kgs 500 grams of poppy husk which is marginally on the higher side than 50 kgs and therefore, it has been considered as a 'commercial quantity' by the trial court for awarding the substantive sentence. But if the weight of the bags is excluded which is roughly 5 kgs, then certainly the quantity would fall under the head 'non-commercial'.

Strengthening his arguments from another angle, Mr. Brar submits that even otherwise there can be marginal error of weighment of two bags and in the present case the contraband allegedly recovered is also marginally high i.e. just 500 grams above 50 kgs. In this peculiar situation, the same if considered to be 'commercial quantity', as already observed by the learned trial court, it will have very serious consequences for the reason

that stringent provisions of ten years minimum sentence and fine of Rs one lac are provided for allegedly keeping in possession 'commercial quantity' of contraband.

Mr. Brar then submits that as per the Legislative change vide Act 9 of 2001, less sentence can be awarded, if recovery is not more than 50 kgs and in the case in hand, if this Court considers so, then in that eventuality, the appellant deserves reduction in the substantive sentence as well as with regard to sentence of fine. He contends that the present case was registered against the appellant after the aforesaid amendment and therefore, the amended Act would be applicable in this case which fact is conceded by the learned State counsel also.

Mr. Sidhu, learned State counsel has not been able to oppose the contentions of Mr. Brar vehemently on merits. However, with regard to quantum of the sentence, the learned State counsel submits that the sentence may be awarded to the appellant commensurating with the quantity recovered from him.

Although Mr. Brar has not assailed the impugned judgment on merits, so far as conviction is concerned and laid stress primarily on reduction of sentence by making an attempt to reduce the quantity from 'commercial' to 'non-commercial', yet being the Court of first appeal, I have gone through the entire evidence once again and am of the view that the conviction of the appellant under section 15 of the Act deserves to be

upheld. Ordered accordingly.

However, I find substance in the submissions advanced by Mr. Brar with regard to reduction in the quantity of contraband and consequential effect thereof on the sentence part.

Admittedly the recovery of 50 kgs 500 grams of poppy husk was effected from two bags and after extracting 250 grams as sample, both the bags were weighed separately which contained 25 kgs of poppy husk each. I have to give some margin to the weight of the bag which according to the conceded position is around 5 kgs. At the same time, some margin is to be given for error of weighment also. Even after taking the weight of both the bags as 4 kgs. (2 kgs. each), still taking into consideration the facts of the case, it can safely be concluded that the recovery allegedly effected from the appellant was certainly less than 50 kgs of poppy husk which would fall under the head 'non-commercial quantity'. If it is so, then, in my view, the appellant deserves reduction in the quantum of sentence on both the counts. My view is strengthened by a judgment of this Court rendered in **Gurlal Singh and ors. Vs State of Punjab** 2003(2) RCR (Criminal) 198 and another judgment rendered in **Sikander Singh vs State of Punjab** 2005(2) RCR (Criminal) 810, in which **Gurlal Singh**'s case (supra) was also considered.

Taking into account the aforesaid weakness in the case of the prosecution, and as per the Legislative change (Act 9 of 2001) less

sentence can be imposed. Therefore, I intend to impose an appropriate sentence.

On the question of awarding sentence, Mr. Brar submits that the appellant was hardly of the age of 30 years at the time of registration of case. His wife and old parents are dependent upon him. He is not a previous convict which fact is otherwise admitted by the learned State counsel. According to Mr. Brar, the entire family is dependent upon the appellant who otherwise has already undergone one year and about nine months of his actual substantive sentence as after registration of the case he was granted bail during trial after staying in custody for some time and is now serving his substantive sentence since the date of his conviction i.e. 1.6.2005.

Keeping in view the totality of facts, the ends of justice would be adequately met with if the substantive sentence already awarded by the learned trial court is reduced to two years and the sentence of fine is reduced to Rs 5000/- only, in default thereof, the appellant shall undergo RI for six months. Ordered accordingly.

The net result is that the instant appeal is dismissed, so far as conviction under section 15 of the Act is concerned but for the modification in the quantum of sentence as indicated above.

All quarters concerned be informed.

(Virender Singh)

December 14, 2006 **Judge**

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